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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,846	12/28/2001	Linda M. Dorschner	KCC 4846 (KC# 16,993)	9653
7590 09/06/2005 Senniger Powers Leavitt & Roedel One Metropolitan Square 16th Floor Street St Louis, MO 63102			EXAMINER REICHLE, KARIN M	
			ART UNIT 3761	PAPER NUMBER

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/034,846

Applicant(s)

DORSCHNER, LINDA M.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 70-94,96-98,100-104 and 106-111 is/are pending in the application.
- 4a) Of the above claim(s) 70-82,94,96-98,103 and 104 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 83-93,100-102 and 106-111 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 70-82, 94, 96-98 and 103-104 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3-29-04.

### *Claim Language Interpretation*

2. Various claim terms have been defined on page 4, line 9-page 8, line 10. All other terminology will be given its common meaning, i.e. dictionary definition. For example, “adjacent” as defined by the dictionary means “close to, lying near”, i.e. is considered relative terminology. See especially page 6, lines 22-25 and 16-18, e.g. “bonded” includes both direct and indirect bonding, and page 5, last 5 lines, i.e. at a minimum “stretchable” means extendable, e.g. a gathered material is extendable, i.e. stretchable, to its ungathered length. With regard to claim 83, claim 107, lines 9-11, claim 108, claim 109, lines 7-8, and claim 110, it is noted that “being stretchable along substantially the entire...of the” “cover” or “liner” does not require that the cover or liner must be stretchable in that direction along the entire dimension, e.g. “being stretchable along the entire length of the cover” is interpreted to mean that the cover is “stretchable” in at least one or some direction at each point along a length which length runs the entirety of the cover, e.g. if the outer cover is gathered in some direction at each point along a length which length runs the entirety of the cover such would be considered to meet the claim language. Similar language with respect to the liner or width will be interpreted similarly.

***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 83-89, 91-92, and 106-111 are rejected under 35 U.S.C. 102(b) as being anticipated by Clear et al, PCT '367.

Claims 106-111: See Figures 1 or 2, i.e. surface area of core 28 is less than or equal to “about” 50% of the surface area of the article, liner is 24, cover is 26. It is noted that the terminology “about” allows some leeway from the dimension it describes. With regard to the front edge being closer to the front end than the back edge is to the back end, see page 13, lines 12-15 and page 12, line 15-page 13, line 2, as well as the paragraph bridging pages 6-7. With regard to the “bond” language, see page 8, lines 15-17 and sentence bridging pages 9-10 as well as the Claim Language Interpretation section supra. With regard to the stretchability of the liner and cover along substantially the entire length and/or width thereof, or “adjacent” front and back edges of the core, see the Claim Language Interpretation section supra, elements 32, 34 and 38, the sentence bridging pages 12-13, page 13, line 17 and page 14, lines 14-15, and 25-33.

Claims 83-89 and 91-92: see page 3, line 5-page 4, line 5, page 7, lines 13-14, page 9, lines 4-28, page 10, lines 9-13, page 10, line 28-page 11, line 10, page 13, lines 3-23, page 15, line 13-page 17, line 16 and page 5, lines 20-23 as well as page 6, lines 6-18 and 22-25 and page 5, last 9 lines of the instant specification, i.e. the cover and liner are at least extensible and at most elastomeric, i.e. “but not necessarily elastomeric” infers “but not unnecessarily elastomeric”, i.e. could be elastomeric, in both the longitudinal direction, i.e. panel 38, and the transverse direction, i.e. waist panel 34. With regard to claims 84-89, lines 3 et seq thereof recite

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capability of the claimed structure. See the portions of Clear cited supra, i.e. Clear et al teaches a cover and liner capable of lateral elongation and substantially permanent elongation laterally.

Therefore, Clear et al includes all the claimed structure. Thus there is sufficient factual basis for one to conclude that the capabilities of such claimed structure would also be inherent in the same structure of Clear et al, see MPEP 2112.01

5. Claims 83-89, 91-92, 100-102 and 106-111 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe et al '673.

Claims 83, 100-102 and 106-111, see Figures 1 and 3-4, col. 4, lines 43-50, col. 6, lines 20-26 and 29-35, col. 22, Table 1, Sample X, col. 22, lines 56 et seq, col. 23, lines 5-9, col. 25, lines 19-45, i.e. surface area of core 28 is less than or equal to "about" 50% of the surface area of the article, liner is 24, cover is 26. It is noted that the terminology "about" allows some leeway from the dimension it describes. With regard to the front edge being closer to the front end than the back edge is to the back end, see col. 4, lines 43-50 and figures 1 and 3-4. The surface area of the portion of the core which extends into the front half of the article has a surface area which is less than about 30% of the surface area of the front half of the article, see again col. 23, lines 5-9. It is noted the article includes both the chassis 22 and the belt 32. With regard to the "bond" language, see col. 8, lines 57-59 and col. 9, lines 31-34 as well as the Claim Language Interpretation section supra. With regard to the stretchability of the liner and cover along substantially the entire length and/or width thereof, or "adjacent" front and back edges of the core, see the Claim Language Interpretation section supra, col. 4, lines 43-50, i.e. spaced but yet "adjacent", col. 10, lines 22-52, and thereby '278 at col. 8, lines 6-13, element 30, col. 11, lines

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19-39, col. 25, lines 19-45, i.e. the waist belt can include the cover and liner of the chassis, the lateral edge in the first waist region as well as the entire side edges can be elasticized.

Claims 84-89 and 91-92: see the portions cited supra as well as Buell '092 incorporated thereby at col. 17, line 30-col. 18, line 27, col. 36, lines 10-35, col. 10, lines 8-37, col. 11, lines 9-51 (Note the discussion supra with regard to the language "but not necessarily elastomeric"), and col. 42, lines 1-11. With regard to claims 84-89, lines 3 et seq thereof recite capability of the claimed structure. See the portions of Roe and Buell cited supra, i.e. teaches a cover and liner capable of lateral elongation and substantially permanent elongation laterally. Therefore, Roe includes all the claimed structure. Thus there is sufficient factual basis for one to conclude that the capabilities of such claimed structure would also be inherent in the same structure of Roe et al, see MPEP 2112.01

### ***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claim 90 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clear et al in view of Morman et al, PCT '913.

See page 1, line 17 and page 9, lines 8-9 of Clear et al, i.e. desire for aesthetically pleasing fit and clothlike appearance. Applicant claims an outer cover of a necked laminate of certain materials which Clear et al does not teach. However see Morman '913 at the abstract, page 18, lines 3-15 and page 19, lines 12-14, i.e. necked laminate of claimed materials used in diaper to improve fit and clothlike appearance. To employ an outer cover including a necked

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laminate as taught by Morman, i.e. as claimed, on the Clear device would be obvious to one of ordinary skill in the art in view of the recognition that such would provide a more aesthetically pleasing fit and clothlike appearance and the desire of such by Clear et al.

8. Claim 93 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al in view of Divo et al, PCT '714.

Applicant claims an outer cover comprising spunbond polypropylene laminated with an SIS adhesive which Roe et al does not teach. However see portions of Roe et al cited supra (Applicant's attention is also invited to definition of "nonwoven" in Materials Handbook, i.e includes spunbond polyolefins, i.e. polypropylene), i.e. outer cover of Roe et al includes spunbond polypropylene which is laminated to elastic by meltblown adhesive to form zero strain laminate to be ring rolled. See also Divo et al at col. 1, line col. 3, lines 29-55, col. 4, lines 35-56, col. 6, lines 31-39, col. 8, lines 6-33, col. 10, lines 8-15, i.e. SIS adhesive applied by a melt blown process is used to attach nonelastic nonwoven layer to elastic layer to form zero strain laminate to be ring rolled. To substitute the adhesive as taught by Divo et al for the adhesive of Roe et al would be obvious, see In re Siebentritt, 54 CCPA 1083, i.e. two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious.

### ***Response to Arguments***

9. Applicants remarks with regard to Clear and Roe have been considered but such remarks are narrower than the claim language, the teachings of the prior art, and the prior art rejections. For example on pages 15-18 Applicant argues claim 107 with regard to the inherency

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argument of the prior art rejection with regard to the proximity of the ends of the core with regard to the ends of the article. However, such argument is not persuasive because the previous Office action as well as the current Office action do not argue inherency with regard to this feature. The rejection sets forth that the prior art teaches the feature. Furthermore, any argument as to the prior art teaching other embodiments as well, e.g. on page 17, is irrelevant in the 102 rejection of this feature.

### *Conclusion*

10. The Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any new grounds of rejection were necessitated by the addition of new claims 107-111, and the amendments of claims 83-89.




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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
August 24, 2005